

EXHIBIT 8

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

BEARBOX LLC and AUSTIN STORMS,)	
Plaintiffs,)	
v.)	
)	C.A. No.
LANCIUM LLC, MICHAEL T.)	21-534-MN-CJB
MCNAMARA, and RAYMOND E. CLINE,)	
JR.)	
Defendants.)	

- - - -
Wilmington, Delaware
Tuesday, December 6, 2022
Trial Transcript
VOLUME I
- - - -

BEFORE: HONORABLE GREGORY B. WILLIAMS
UNITED STATES DISTRICT COURT JUDGE

- - - -

Michele L. Rolfe, RPR, CRR

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2 **APPEARANCES:**

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4
5 **ASHBY & GEDDES**
6 **BY: ANDREW C. MAYO, ESQ.**

7 **-and-**

8 **MARSHALL, GERSTEIN & BORUN LLP**
9 **BY: BENJAMIN T. HORTON, ESQ.**
10 **JOHN LABBE, ESQ.**
11 **For the Plaintiffs**

12 **BARNES & THORNBURG LLP**
13 **BY: WILLIAM BURTON, ESQ.**
14 **MARK C. NELSON, ESQ.**
15 **ADAM M. KAUFMANN, ESQ.**
16 **DARRICK HOOKER, ESQ.**
17 **For the Defendants**
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1 Dr. McClellan's slides now purport to, you know,
2 indicate that he will testify regarding Your Honor's claim
3 construction.

4 And then if you turn to slide PDX 3.34. And, I
5 guess, Your Honor, I should ask --

6 THE COURT: Four?

7 MR. KAUFMANN: Well, plaintiffs changed the
8 numbers of their demonstrative, so I'm not sure which
9 version they submitted to you, if their PDX3.something or 4.
10 something. But I believe it's slide PDX3.34, is a slide
11 titled "Mr. Storms communicated the features of Claim 1."

12 At the top of that slide is an excerpt of the
13 claim language that includes the Power Option Agreement and
14 minimum power threshold terms that Your Honor found
15 Dr. McClellan's opening and reply reports do not explain how
16 any of the evidence in this case supports conception under
17 Your Honor's claim construction.

18 And, so, all -- you know, Your Honor, it appears
19 that from slide 3.34 through the remainder of these slides,
20 essentially, Dr. McClellan intends to walk through the claim
21 language and compare it to evidence -- or compare it to
22 documents that he sent to Mr. McNamara or other evidence in
23 the case.

24 And, Your Honor, this -- you know, and our
25 position is exactly the issue that your motion to strike was

1 meant to preclude, that this is extremely prejudicial to
2 defendants. This is all new analysis. As Your Honor found,
3 there was no explanation of how the -- any of the evidence
4 applied the properly construed terms to the evidence in this
5 case.

6 We've had no opportunity to depose Dr. McClellan
7 on this new analysis. Our experts have not had the
8 opportunity to consider and respond to that analysis. You
9 know, we understand that was the prejudice that Your Honor
10 found in part to justify exclusion of his supplemental
11 report.

12 And, Your Honor, I would also note that your
13 motion to strike -- or your ruling on the motion to strike
14 found that plaintiffs expressed disregard of the Court's
15 scheduling order indicated bad-faith in the serving of that
16 supplemental report.

17 Your Honor, we have filed two motions addressing
18 how Dr. McClellan's opinions pertain to the claim
19 construction. Your Honor has granted our motion to strike.
20 You granted our motion in limine to preclude testimony
21 inconsistent with the claim construction ruling.

22 And now, you know, two days before trial,
23 plaintiffs again have served demonstratives that suggest
24 they are going to elicit testimony that we believe is
25 inconsistent with both of your rulings on our motion to

1 strike and our motion in limine number one.

2 THE COURT: Well, the motion says strike --
3 struck the supplemental expert report. That -- we struck
4 that. And we said that Dr. McClellan cannot testify
5 inconsistent with the Court's claim construction.

6 MR. KAUFMANN: Yes, Your Honor.

7 THE COURT: I'm not so sure I went so far as how
8 you're characterizing it now. But let me hear from
9 plaintiffs' attorney response.

10 MR. HORTON: Yes, Your Honor. Thank you.
11 That's exactly what I was going to say is we didn't think
12 that the Court's words went that far. We understand that
13 the supplement is out. We intend to introduce testimony --
14 testimony and opinions from Dr. McClellan that are supported
15 by his original reports only, and deposition testimony
16 asking him questions about those original reports.

17 And so, that is -- that is all we intend to do.

18 THE COURT: All right. So Dr. McClellan can't
19 come to trial now and give new opinions that aren't
20 supported by his original report.

21 MR. HORTON: That's correct, Your Honor.

22 THE COURT: You understand that?

23 MR. HORTON: Absolutely.

24 MR. KAUFMANN: Your Honor, if I may. You know,
25 part of our concern about these slides as well is the

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P R O C E E D I N G S

(REPORTER'S NOTE: The following trial was held in
Courtroom 6-B, beginning at 9:30 a.m.)

THE COURT: Good morning.

ALL COUNSEL: Good morning, Your Honor.

THE COURT: You may be seated.

All right. So the Court has reviewed the
parties' submissions regarding Dr. McClellan and the Court
is going to allow Dr. McClellan to testify. We're going to
take it -- we're going to allow him to testify on a
conditional basis.

Based upon my review thus far of the parties'
submissions, BearBox was able to cite to places in his
expert report that arguably you can find some basis in his
opinion for.

But, with that said, let me tell you that what I
am clear on is that -- a couple of things.

Dr. McClellan was previously of the opinion that
the load, not the power entity, held the option in the Power
Option Agreement that Dr. McClellan was previously of the
opinion that a load was not required to use the minimum
power threshold. And that thus he, in his opening report,
in his reply report, did not explain how BearBox's system

DIRECT EXAMINATION - DR. MCCLELLAN

1 MR. RICORDATI: Okay. We can remove that.

2 MR. KAUFMANN: Your Honor, we request to strike
3 the testimony of the last slide as well.

4 THE COURT: Okay. That's granted.

5 BY MR. RICORDATI:

6 Q. Okay. I'd like to move to the next slide.

7 Now, Dr. McClellan, in your view, did any of the
8 claim terms in the '433 patent require construction when you
9 did your initial analysis?

10 A. My understanding during the initial analysis is that
11 the two sides had agreed that there would be plain and
12 ordinary meaning applied to the terms.

13 Q. And since your report, you've been made aware that
14 the Court has construed two particular claim terms, Power
15 Option Agreement and minimum power threshold; is that
16 correct?

17 A. Yes, I think that arose in my deposition where I
18 thought it was kind of strange that there hadn't been a
19 *Markman* hearing at that point.

20 MR. KAUFMANN: Objection, Your Honor. This was
21 the issue of Dr. McClellan's supplemental report. It's the
22 only place where he discusses the Court's claim construction
23 which Your Honor struck.

24 THE COURT: Yeah, but this is just the Court's
25 claim construction, right, so it's -- he -- this is just the

DIRECT EXAMINATION - DR. MCCLELLAN

1 claim construction. So this demonstrative is fine.

2 BY MR. RICORDATI:

3 Q. Did the Court's constructions change any of your
4 opinions?

5 A. No.

6 Q. Based on your review of Mr. Storms' system as of
7 early May 2019, did you form an opinion as to whether
8 Mr. Storms conceived of the inventions claimed in the '433
9 patent?

10 A. Yes.

11 Q. What was the basis for your opinion?

12 A. The basis for the opinion was the review of the
13 patent claims, the patent claims, the filing history and the
14 materials that were provided to me related to Storms'
15 activity in developing the BearBox system as well as the
16 simulation outcomes and so on.

17 Q. In your opinion, did Mr. Storms conceive of the
18 inventions claimed in the '433?

19 A. Yes.

20 Q. Based on your review of Mr. Storms' system as of
21 early May 19th -- early May 2019, did you form an opinion as
22 to whether Mr. Storms communicated information disclosing
23 the inventions claimed in the '433 patent to Lancium?

24 A. Yes.

25 Q. What was the basis for your opinion?

DIRECT EXAMINATION - DR. MCCLELLAN

1 some economic considerations are what to do with Bitcoin,
2 but that's not specific -- it's not specified in the '632
3 application. The only economic consideration taught or even
4 suggested in the '632 application is using energy when it's
5 available at a negative price or when you're losing money by
6 using it.

7 So it doesn't mention Bitcoin, it doesn't talk
8 about cryptocurrency or breakeven calculations or a
9 performance strategy to instruct a set of computing systems.

10 Q. Just to be clear, you said that the '632 patent
11 describes only purchasing energy when it's at a negative
12 price; is that right?

13 A. Right.

14 Q. Doesn't explicitly describe any other economic
15 consideration, does it?

16 A. I don't -- I don't think so.

17 Q. Okay. Now, in his report, Dr. Ehsani claims that --
18 that Raymond Cline had a supposed flash of insight that lead
19 to conception in late August 2019 when he noted: "The
20 quote, award received after offering into an Ancillary
21 Services program and received as part of the establishment
22 of the Power Option Agreement, (is essentially an)
23 "obligation to our [Lancium's part] that we consume the
24 amount of power that ERCOT could curtail."

25 Based on that, Dr. Ehsani argues that Mssrs.

DIRECT EXAMINATION - MR. CLINE

1 MR. NELSON: So before we end here, there's some
2 notebooks up there with some other exhibits that you've
3 looked at. And since they are not -- these exhibits are not
4 objected to, I just want to get -- get him to verify that
5 he's not -- knows them and then I want to move exhibits in.

6 BY MR. NELSON:

7 Q. So can you look at TX266, and just let me know if
8 you've seen it before. Actually, maybe I'll do this, would
9 you just look through -- look through the notebooks
10 generally and confirm that you've seen the exhibits and
11 you're familiar with them, and maybe we'll just move them
12 all in at once along with the ones that -- that we referred
13 to here in the outline.

14 MR. NELSON: Just for the record, a lot of them
15 are, like, the -- the ready engineer reports that we've
16 referred to, the ones that are in between the ones that we
17 used as exhibits. And some other things.

18 THE COURT: Okay. Any objections?

19 MR. HORTON: Yeah, Your Honor, we object to the
20 extent that Dr. Cline is not going to say anything about
21 these documents. We don't mind moving exhibits in at the
22 end of his testimony, to the extent he testified to them.
23 But I -- I don't agree that he can just sort of push a bunch
24 of documents in the record.

25 MR. NELSON: Well, I think I've laid the

DIRECT EXAMINATION - MR. CLINE

1 foundation for them, and these aren't objected to.

2 Counsel -- both sides agreed they are admissible.

3 THE COURT: If he hasn't testified about the
4 document in any manner, that's their objection.

5 MR. NELSON: Yeah, I understand that. But, Your
6 Honor, we -- you know, we're asked to basically show
7 development of 20 separate claims in eight hours, as well as
8 defend against Mr. Storms' stuff.

9 None of these exhibits are objected to. Like
10 the Ready Engineering ones, for example, I think I laid a
11 foundation of those, those are -- there's a whole slew of
12 these reports on this page that are the same daily -- the
13 monthly reports, and other versions of that overview. So I
14 guess I --

15 THE COURT: Okay. So why don't you just take
16 them as a group, I mean.

17 MR. NELSON: That's what I was trying to do. I
18 guess -- okay, can you look at the Ready Engineering ones,
19 real quick. So it would be TX191 through 195. They should
20 all be in the same binder.

21 BY MR. NELSON:

22 Q. And just confirm that you are familiar with all of
23 the Ready Engineering ones that are in that binder.

24 A. Yes.

25 Q. There should be another one that is other technical

DIRECT EXAMINATION - MR. CLINE

1 documents, a TCPIP and Python e-mail, a base load design
2 document, communications between you and Vitor, which we've
3 talked about some of them in the e-mail -- in the -- during
4 the testimony regarding the MP-awarded power, and a
5 discussion of -- further discussion, I think, of demo day
6 that was -- that we talked about.

7 A. Yes, I'm familiar with those documents.

8 Q. There's another one that is an ERCOT market
9 participant agreement, Exhibit 711 and 712, are you familiar
10 with Lancium becoming an ERCOT market participant?

11 A. Yes. In fact, I filled out a version of one of those
12 applications.

13 THE COURT: So, Mr. Nelson, in addition to
14 asking him if he's familiar with it, you might want to ask
15 him what is it.

16 MR. HORTON: Your Honor, he might also want to
17 look at it. He's sort of not even looking at them.

18 MR. NELSON: Counsel, you didn't object to these
19 exhibits. I mean, I appreciate the need, but you're going
20 to try to make me burn a half an hour for exhibits that you
21 didn't object to at all.

22 MR. HORTON: I didn't object to them being on
23 your exhibit list --

24 MR. NELSON: You didn't object to them being
25 admissible, Counsel.

DIRECT EXAMINATION - MR. CLINE

1 MR. HORTON: Your Honor, we -- we didn't object
2 to them being on the exhibit list, but that wasn't
3 permission to introduce them in evidence in bulk with the
4 witness not even looking at them.

5 MR. NELSON: He's looking at them now.

6 THE COURT: So direct your comments to the
7 Court.

8 MR. NELSON: Sorry, Your Honor.

9 THE COURT: But they didn't object to them. And
10 I understand that you have limited time, but you do got to
11 have him at least testify to some extent about the documents
12 so that he's familiar with it, he knows what it is, and
13 gives us quick summary of what it is.

14 MR. NELSON: Okay.

15 BY MR. NELSON:

16 Q. Okay. So let's do it this way, Dr. Cline. So pick
17 up the Ready Engineering notebook, please.

18 A. That's the first notebook.

19 Q. Okay. So TX191 through TX195, can you confirm that
20 those are Ready Engineering report documents and that you
21 are familiar with them?

22 A. Yes, 191 is an e-mail and some attachments that I'm
23 familiar with describing some meeting schedules. 192 is a
24 design document from Ready Engineering, which I have
25 reviewed and made comments to.

DIRECT EXAMINATION - MR. CLINE

1 The 193 is another Ready Engineering design
2 document -- well, it's a design document received from a
3 fabricator or -- that was working with JV Driver and I've
4 reviewed and had input into that.

5 194 is a description of the fire suppression
6 system options and summary, which I've reviewed and had
7 input into.

8 195 is the Lancium datacenter control narrative
9 draft, one of them that we discussed.

10 Q. So the next ones are 204 through 208.

11 A. 204 is an exchange of e-mail from our finance
12 department and includes Ready Engineering. I am familiar
13 with that document and I've reviewed it.

14 205 is a Ready Engineering progress report and
15 I've reviewed those multiple progress reports.

16 206 is an invoice that shows the charges for
17 work done by Ready Engineering and I've had -- I've reviewed
18 those.

19 207 is another progress report from Ready
20 Engineering, which I've reviewed.

21 208 is an invoice from Ready Engineering, which
22 I've reviewed.

23 210 is a substation connection document from
24 Ready Engineering which I've reviewed. And --

25 MR. NELSON: Let's stop there. So 210. Go

DIRECT EXAMINATION - MR. CLINE

1 to -- go to TX356.

2 A. Let me coordinate notebooks here. E-mail from Ready
3 Engineering with a progress report that I have reviewed.

4 Q. So let's go to a different group of documents here,
5 TX354 and 355.

6 A. 54?

7 Q. Yeah, 354 and 355.

8 A. 354 is a document about container design that I was
9 copied to and reviewed.

10 TX355 is a diagram of network communication
11 intended for a -- the Thomas Road site, which was performed
12 by my group at my direction.

13 Q. Let's go to TX329.

14 A. 329.

15 Q. Yeah.

16 A. Oh, okay.

17 This is an e-mail between Ian Rock, Vitor
18 Henrique and myself talking about the Lancium control
19 narrative. And I was copied too on that.

20 Q. Let's go to TX56 and 57.

21 A. TX56 --

22 Q. 56 and 57.

23 A. Back to the first one.

24 So TX56 is an e-mail between Eric Kutscha and
25 Matthew Gasparo. I'm copied too on this e-mail and I've

DIRECT EXAMINATION - MR. CLINE

1 reviewed it.

2 57 was an attachment to that e-mail I believe,
3 which describes an overview of our operational control
4 system.

5 Q. Let's go to TX109.

6 A. TX109.

7 Q. 109, yeah.

8 A. The next document I have in my binder is TX162.

9 Q. It's up on the screen. Why don't you do it that way?

10 A. Okay.

11 Q. Are you familiar with this document?

12 A. Yes. This is an e-mail that I wrote to Vitor and Ian
13 and Thomas Salvatore.

14 Q. Let's go to TX282. Maybe it's just easier to pull
15 them up.

16 Are you familiar with this one?

17 A. Yes, this is an e-mail that I wrote to Michael
18 McNamara copying some of our contacts at SBI.

19 Q. Let's go to TX266.

20 A. TX266 is a presentation that I've reviewed and had
21 input into.

22 Q. Let's go to TX282. Oh, I already did this one.

23 MR. NELSON: So, Your Honor, I move that we move
24 into evidence the group of exhibits that I just read as well
25 as TX162, TX201, TX211, TX277, TX301, TX332, TX356, TX363,

CROSS-EXAMINATION - MR. CLINE

1 TX364, TX368, TX369, TX426, TX427, TX428, TX429, TX430,
2 TX432, TX433, TX468, TX567, TX568, TX569, TX570, TX579,
3 TX582, TX583, TX585, TX709, TX712, TX754, TX756, TX757,
4 TX758, TX759, TX763, TX764, TX765, TX778, TX787, TX790,
5 TX972, TX976 and TX977.

6 MR. HORTON: Your Honor, they might have be
7 somewhat out of order, but to the extent those were all the
8 exhibits that were discussed with Dr. Cline, no objection.

9 MR. NELSON: And Your Honor, just to request in
10 case I missed one, we'll have try to come back and try to
11 get it admitted later, but I think we got them all. Thank
12 you.

13 CROSS-EXAMINATION

14 BY MR. HORTON:

15 Q. Good afternoon, Dr. Cline.

16 A. Good afternoon.

17 Q. I heard you say a little while ago -- before that we
18 heard a lot about a little. There were some things you
19 talked about that were in the documents that I didn't quite
20 see in the documents, but we'll have a chance to look at
21 that in post-trial, I think.

22 One stuck out to me, though. If we could look
23 at TX163.

24 Do you recognize this document?

25 A. Yes, I do.

CROSS-EXAMINATION - MR. CLINE

1 Q. This is the '632 application, right?

2 A. This is the patent.

3 Q. And Mr. Nelson asked you some questions about the
4 '632 application, didn't he, just now?

5 A. Yes, he did.

6 Q. And I thought I heard you say that the '632
7 application teaches monitoring Bitcoin price.

8 Did I hear you right?

9 A. I -- I said it -- that monitoring Bitcoin price was
10 one of the economic considerations.

11 Q. But you're not saying that the '632 application
12 actually includes the words "Bitcoin price," are you?

13 A. I can look through it if you want, but I believe my
14 statement was that the economic considerations included
15 Bitcoin price.

16 Q. Just to be clear, Dr. Cline, are you saying that the
17 words "Bitcoin price" are in the document or you're saying
18 the words "economic considerations" are in the document?

19 A. I believe the document would talk about economic
20 considerations. I can look through the document in its
21 entirety if you want me to check.

22 Q. Dr. Cline --

23 A. -- the language.

24 Q. Dr. Cline, I think I also heard you say that the '632
25 application, TX163, teaches monitoring Bitcoin mining

CROSS-EXAMINATION - MR. CLINE

1 Q. You were alleged in that lawsuit to have received
2 verbal communications and presentation materials from the
3 plaintiff in that case, weren't you?

4 A. I believe that's so, yes.

5 Q. I'd like to direct your attention to TX223, please.
6 This is one of those documents where I think I heard a lot
7 about a little, Dr. Cline.

8 You said this is a dashboard, right?

9 A. This is documentation of elements that we were -- we
10 were considering as requirements for our dashboards, yes.

11 Q. And a dashboard is nice graphics, it's meant for
12 someone to look at, right?

13 A. It's -- this was intended for our network operation
14 system -- our network operation center where our network
15 operators would be looking at and monitoring the dashboards.

16 Q. Those are human beings, right?

17 A. Yes.

18 Q. And one of the things I remember you speaking about
19 was miner status.

20 Do you remember answering questions about miner
21 status?

22 A. I do.

23 Q. I thought I heard you say that miner status is
24 disclosed in TX223, includes individual and collective miner
25 status.

CROSS-EXAMINATION - MR. CLINE

1 Do you remember saying that?

2 A. Yes.

3 Q. Does it say that here?

4 A. It doesn't say that explicitly, but it does talk
5 about the number of miners offline, defective, and the
6 number of miners operating within test parameters --

7 Q. Let's look at -- I'm sorry.

8 A. Some of that is information about individual miners
9 and some of that is information about collective miners.

10 Q. Let's look at TX169.

11 Dr. Cline, do you recognize that document?

12 A. Yes.

13 Q. This document is titled "The Operational Controls
14 Overview," correct?

15 A. Yes.

16 Q. And this is for the Lancium brain, as you were
17 calling it at that time, right?

18 A. Yes, I believe that was the term we were using at the
19 time.

20 Q. And if we could look at the lower right-hand corner
21 of this document.

22 The date there is May 7, 2019, correct?

23 A. That's correct.

24 Q. And let's look at TX057, page 5.

25 You see section B is titled "Automated

CROSS-EXAMINATION - MR. CLINE

1 Control-Pricing Thresholds," correct?

2 A. Yes.

3 Q. And there it mentions the Lancium brain in the first
4 sentence, correct?

5 A. Yes.

6 Q. It gives an example A, correct?

7 A. Yes.

8 Q. And in the last paragraph there it says: "If the LMP
9 goes greater than \$100, all miners will receive an automatic
10 command to stop hashing."

11 Do you see that?

12 A. Yes, I do.

13 Q. And then the next sentence says: "This status will
14 remain in place until LMP drops below \$50," do you see that?

15 A. Yes.

16 Q. And then the third sentence says: "When LMP goes
17 below \$50, all miners will receive a command to start
18 hashing and will return to settings prior to event."

19 Do you see that?

20 A. Yes.

21 Q. And, again, this document is dated May 7, 2019?

22 A. Yes.

23 Q. Are there any other examples given under section B,
24 there aren't any, right?

25 A. No.

CROSS-EXAMINATION - MR. MCNAMARA

1 says: "A load-only CLR, however, would ramp down, i.e.,
2 stop or reduce its electricity consumption by, for
3 example" --

4 And then let's go to the next page, TX4.

5 -- "reducing Bitcoin mining operations. When
6 this occurs, the load-only CLR, i.e., flexible datacenter,
7 receives the difference in the value of the Real-Time
8 electricity price versus the datacenter's preexisting power
9 purchase agreement price."

10 Do you see that?

11 A. I do see that.

12 Q. Mr. McNamara, you believe that the power option
13 agreement limitation in the claims of the '433 patent was
14 met by Layer1's CLR demand response contract, right?

15 A. I'm sorry, can you say that again.

16 Q. Sure. You believed that the power option agreement,
17 as recited in the claims of your '433 patent, that
18 limitation was met by the demand response contract of
19 Layer1's CLR, correct?

20 A. I'm not sure I'd agree that that statement is
21 exhaustive. I'd need to think about it.

22 Q. Well, let's look at TX17.

23 MR. HORTON: Let's go to the next page, please.

24 BY MR. HORTON:

25 Q. Do you recognize this document, Mr. McNamara?

CROSS-EXAMINATION - MR. MCNAMARA

1 A. It looks like a claim chart, yes.

2 Q. Okay. And you approved this claim chart for filing
3 with the complaint against Layer1 in the Federal District
4 Court in the Western District of Texas, correct?

5 A. I'm sure I approved it, but I will say this: It was
6 drafted by a team of outside counsel.

7 Q. You understand that a claim chart maps your '433
8 patent claims to the accused Layer1 system, correct?

9 A. I would just like to make a statement, this was a
10 preliminary claim chart and the case was settled shortly
11 thereafter, so I'm sure this would be subject to change.
12 But yes, this is our claim chart.

13 Q. This is a representation of what Lancium believed was
14 infringing the claims of its '433 patent, right?

15 A. That was our initial claim char, yes.

16 MR. HORTON: Okay. Let's look at Page 6,
17 please. Let's zoom on limitation B2(I).

18 BY MR. HORTON:

19 Q. That limitation reads: "Receive power option data
20 based at least in part on a Power Option Agreement," do you
21 see that, sir?

22 A. I do see that.

23 Q. Okay. Let's -- you can see that on the right, this
24 is describing Layer1's system, but I want to go to the next
25 page because it continues on.

CROSS-EXAMINATION - MR. MCNAMARA

1 MR. HORTON: So TX17, Page 7. If we can zoom in
2 on the right.

3 BY MR. HORTON:

4 Q. It's continuing that discussion of that Power Option
5 Agreement limitation. And the last paragraph there,
6 Mr. McNamara, do you see that it reads: "Upon information
7 and belief, Layer1's demand response contracts are Power
8 Option Agreements."

9 Do you see that, sir?

10 A. I do see that.

11 Q. You agree with that statement?

12 A. Um, yeah, I would say I probably wouldn't phrase it
13 this way today. But I see that now, yes.

14 Q. Let's look at TX96, please. Mr. McNamara, you
15 mentioned during your direct examination SBI?

16 A. Yes.

17 Q. SBI was the first Lancium investor; is that correct?

18 A. No. We -- we had a friends and family seat around in
19 December of 2017.

20 Q. And was SBI the first outside investor; is that fair
21 to say?

22 A. They are a series A investor, yes.

23 Q. And SBI owns approximately 25 percent of Lancium; is
24 that right?

25 A. Yes, that's right.

CROSS-EXAMINATION - DR. EHSANI

1 Do you see that?

2 A. I do.

3 Q. A power generation source could include a wind farm,
4 correct?

5 A. You do not exercise Power Option Agreement, as
6 defined in the patent, with a wind farm. You do it with the
7 power provided -- the grid power provider. Because it has
8 to be curtailable --

9 Q. Dr. Ehsani --

10 A. -- on request in a granular way.

11 Q. My question is: A power generation source could
12 include a wind farm, correct?

13 A. Connected to the grid before it arrives at the load
14 discussed in the patent.

15 Q. Now, you didn't know Mr. McNamara before this case,
16 did you?

17 A. No, sir.

18 Q. Nor Dr. Cline?

19 A. No, sir.

20 Q. And it's your opinion that Dr. Cline and Mr. McNamara
21 had a flash of insight in about August of 2019; is that
22 right?

23 A. Based on the information that I was given to analyze,
24 it appears that the conception occurred to them.

25 Q. Let's look at TX --

CROSS-EXAMINATION - DR. EHSANI

1 A. Around then.

2 Q. Let's look at TX526. And this is the document that
3 you cite, or one of them, in your expert report for this
4 flash of insight; is that right?

5 A. I don't recall. If you represent as such, I accept
6 your representation.

7 Q. Here, Mr. Cline is reporting on a call that he had
8 with Tim Carter, do you see that?

9 A. I read there that "we had a call with Tim Carter."

10 Q. And Mr. Cline explains in the next paragraph: "An
11 important point, which didn't come across in our
12 conversations, is that the award is essentially an
13 obligation on our part that we consume that amount of power
14 that ERCOT could curtail. If we routinely use less than our
15 award, we could suffer a penalty."

16 This is Mr. Cline explaining -- Dr. Cline
17 explaining a Power Option Agreement to Mr. McNamara,
18 correct?

19 A. This is part of their learning curve, yes.

20 Q. Reporting on his call to Tim Carter, correct?

21 A. Mr. Cline is writing this e-mail to Mr. McNamara,
22 this -- analyzing this part of the Power Option Agreement,
23 yes.

24 Q. It's not your opinion that Dr. Cline invented Power
25 Option Agreements, is it?

REDIRECT EXAMINATION - DR. EHSANI

1 A. Sir, Mr. Cline and Mr. McNamara invented the control
2 of power to a datacenter based on Power Option Agreement, as
3 they define it in their patent and is construed by the
4 Court. It's the combination of two technologies. That is
5 the essence of the patent.

6 Q. But neither of them invented Power Option Agreements,
7 correct?

8 A. Power Option Agreement, as defined in the patent, is
9 an element of the claimed inventions.

10 MR. LABBE: No further questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. NELSON:

13 Q. This is figure 2 that was up just a little while ago,
14 do you see that?

15 A. Yes, sir.

16 Q. Does figure 2 show separate grid and behind-the-meter
17 connections?

18 A. Separate grid?

19 Q. Yeah. Well, is it your opinion that figure 2 shows
20 separate grid and separate behind the -- that the grid
21 connections and the behind-the-meter connections are
22 separate?

23 A. No, it's all an integrated grid that benefits from
24 power from different places.

25 MR. NELSON: All right. No further questions.

1 THE COURT: And that should be 14 point font.

2 MR. NELSON: Just one other housekeeping matter.

3 THE COURT: Yes.

4 MR. NELSON: At the pretrial conference, we had
5 talked about sort of the equivalent of directed motions in a
6 bench trial, so we made the Rule 52 equivalent motions, and
7 we talked at that time about briefing that.

8 I don't know if Your Honor wants briefing on
9 that.

10 THE COURT: No, because I'm sure you understand
11 the standard is the same as if, you know, I'm deciding it at
12 the end of the case, so your submissions are going to meet
13 that, so we don't need additional briefing on that.

14 MR. NELSON: Thank you, Your Honor.

15 THE COURT: All right. So with that, we are
16 done. I appreciate everybody's time.

17 (Whereupon, the following proceeding concluded
18 at 3:48 p.m.)

19 I hereby certify the foregoing is a true
20 and accurate transcript from my stenographic notes in the
21 proceeding.

22 /s/ Michele L. Rolfe, RPR, CRR
23 U.S. District Court
24
25